UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/611
1 July 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 611

Case No. 650: TRAORE

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas at the request of Diawa-Mory Traoré, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 6 February 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 6 February 1992, the Applicant filed an application requesting the Tribunal:

"...

(a) to overrule the recommendation of the Joint Appeals Board, and rescind the subsequent decision of the Secretary-General, not to renew my intermediate term contract;

(b) to order payment of full salary from 1 January 1991, until reinstatement or to the date the Tribunal reaches its decision;

(c) to reinstate me in the United Nations service at the UN-ECA [United Nations Economic Commission for Africa], from 1st January 1991, with all benefits until reinstated, such as (i) salary, (ii) Pension Fund entitlement, (iii) leave, (iv) within-grade salary increments, educational allowance, etc., ... and (v) reimbursement

of all expenses incurred in respect of the evacuation of my family out of Addis Ababa to Nairobi (Kenya) in connection with the Ethiopian crisis (...), with full payment of subsistance allowance;

(d) to order that I be reimbursed the full costs of communications incurred, pursuant to the case, ...

(e) to order any other relief, the Honorable Tribunal may consider fit in the interest of justice;

(f) to order the ECA Administration to provide for a permanent counseling service at ECA comprising of at least three legal counsels; ...

(g) in the event that opportunities for employment develop elsewhere within the United Nations System to order that it be clearly understood and so recorded in my personal file with the UN-ECA that my separation from the latter was as a result of my contract having come to an end."

Whereas the Respondent filed his answer on 17 July 1992;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 29 July 1988, as a Project Expert on Identification, Design Monitoring and Evaluation in the Technical Assistance, Coordination and Cooperation Office of ECA in Addis Ababa. He served initially on a one-year intermediate-term appointment at the L-5 level, under the 200 Series of United Nations Staff Rules. His appointment was extended first, for a fixed-term period through December 1989 and then, from 1 January through 31 December 1990.

In the Personal History form completed by the Applicant on 23 February 1987 and submitted to ECA in connection with his application for employment, the Applicant stated, in connection with his prior employment as Executive Secretary of the Niger Basin Authority (NBA), from March 1980 to March 1984, that his supervisor

was "the Council of Ministers" and that the reason for leaving was the "end of term".

On 19 October 1990, the Chief, Personnel Section, transmitted to the Applicant a copy of an Audit Report prepared at the request of the Council of Ministers for the NBA, on the administration of the NBA during the years 1982-83, when the Applicant was its Executive Secretary. He informed the Applicant that the Audit Report had been sent to ECA, following ECA's "request for confirmation of [the Applicant's] credentials and work record as described in [the Applicant's] CV [Curriculum Vitae], in accordance with established procedures". The Chief of Personnel further stated that the Audit Report was "an indictment of fraud and misuse of funds entrusted to [the Applicant]". He added: "Had these facts been known to [ECA] at the time of your recruitment you would not have been appointed, since policies governing the recruitment of UN staff require a high standard of integrity". The Chief of Personnel asked the Applicant to submit his resignation from ECA "effective immediately".

In a reply dated 20 October 1990, the Applicant argued, inter alia, that the Audit Report had "no legal or political validity" as it was not "validated" as an official act of the NBA legislative body and that such validation was not given because the allegations contained therein had not been established. He concluded by stating that he would refer "the whole matter to the good judgement of [the Executive Secretary]".

On 7 November 1990, the Chief, Personnel Section, informed the Applicant that his intermediate appointment, due to expire on 31 December 1990, would not be extended.

In a letter dated 3 December 1990, the Applicant requested the Chief, Administrative Review Unit, to suspend this administrative decision until a final decision could be taken after conducting disciplinary proceedings, to which he was entitled. Having received no substantive reply, on 19 February 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 8 October 1991. Its conclusions and recommendation read as follows:

"Conclusions and Recommendation

24. On the basis of the aforesaid, the Panel concludes that the non-extension of the Appellant's appointment was properly taken, within the prerogative of the Secretary-General. While a reason was given by the Administration, the fact remains that the Appellant had no reasonable expectancy of an extension. The Panel also concludes that there is no evidence to suggest that ECA's decision was influenced by improper motives or prejudice. The Panel, therefore, decided to make no recommendation to the Secretary-General in support of this appeal."

On 9 October 1991, the Director, Office of the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, in the light of the JAB's report, had decided to maintain the contested decision.

On 6 February 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was wrongfully separated from ECA as he had a legal expectancy of continued employment.

2. The Applicant was denied due process in connection with his separation from ECA.

Whereas the Respondent's principal contentions are:

1. Temporary appointments do not carry any expectation of renewal. No circumstances exist which give rise to any legal expectancy of renewal.

2. Disciplinary proceedings cannot be instituted in respect of actions occurring prior to entry into UN service. Staff are entitled to due process in respect of decisions taken on the basis of such prior acts. Reasonable due process was accorded.

The Tribunal, having deliberated from 8 June to 1 July 1993, now pronounces the following judgement:

I. The Applicant had first been appointed to ECA as recently as July 1988 and the Tribunal finds he did not have a legal expectancy of renewal. Although the Applicant's appeal (which was unanimously rejected by the JAB) could be disposed of on the basis of this finding on legal expectancy alone, the Tribunal will deal with the other matters raised by the Applicant.

II. The Tribunal, in dealing with the question of whether the Respondent was justified in choosing administrative rather than disciplinary action, is mindful that the Respondent had more than one course of action open to him, provided that his discretionary power was not exercised with improper motive or in a way that was unreasonably detrimental to the staff member. There is no evidence of improper motive or of the power having been exercised to the detriment of the Applicant. Consequently, the power was exercised properly.

III. A copy of an Audit Report from the Niger Basin Authority (NBA) which included grave accusations against the Applicant, was made available to the Applicant's superiors. A copy of the same report was sent to the Applicant and, at the same time, he was asked to resign. The Applicant says that the report is inaccurate, inconsistent and biased and that its principal author was an interested party. He complains of the manner in which the Report was obtained by ECA and he makes the point that the NBA did not take disciplinary action against him or against other implicated persons.

IV. The Tribunal deems it not to be of relevance that the NBA failed to take action against the Applicant or others. There could be many different reasons for this and it is not for the Tribunal to speculate on this matter. Neither is the question of how the Report came into the possession of ECA of relevance or importance - its method of transmission cannot affect its contents. What might be of relevance is the Applicant's contention that the report is

inaccurate, inconsistent and biased. However, the significance of these suggestions is put into context when one looks at the Applicant's detailed response to the contents of the report. It appears that, even on his own assessment of the Audit Report, his behaviour was not orthodox, although he would argue that it was for the best of motives. He, for example, paid, or caused to be paid a sum of money which, he says, was for maintenance but which was described as housing allowance, for accounting purposes. The Applicant says he paid money to a doctor for damages but it was not budgeted. The Applicant also says his competence cannot be called into question. Even if that is accepted, the Tribunal can only infer from the Applicant's explanatory statement - and this is to put it at its best from the Applicant's point of view - that he made use of monies for certain purposes while pretending that they were being used for other purposes.

V. In the light of the Applicant's own response to the report, it is difficult to appreciate his contention that it is biased and inaccurate and inconsistent.

VI. The Tribunal accepts that, if the contents of the report had been known to ECA before the Applicant's first contract, he would never have been employed. On this issue, the Tribunal would emphasize the importance of the Administration making a thorough investigation before each appointment. The Tribunal is also conscious of staff regulation 9.1 (a)(ii) which refers in the following terms to one of the grounds for the termination of the appointment of a staff member: "facts anterior to the appointment, relevant to suitability, which if they were known at the time of his appointment, should have precluded such appointment".

VII. While the Tribunal makes its finding on the basis of lack of legal expectancy alone, it has dealt with the other points in the interest of completeness.

VIII. The Tribunal therefore rejects the Applicant's claim in all its aspects.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 1 July 1993

R. Maria VICIEN-MILBURN
Executive Secretary